

REMARKS:

REMARKS REGARDING CLAIMS AMENDMENTS:

The above noted amendments to the claims have been made so that the scope and language of the claims is more precise and clear in defining what the Applicant considers to be the invention. Specifically, the amendment to claim 9 has been made to recite the presence of a load-receiving belt between the floor and the cover. Claim 19 has been amended to include the limitations of claim 4.

Support for the above amendments to the claims can be found in the original specification as filed.

The claims and amended claims are submitted as being clearly distinct and patentable over the art of record and therefore their entry and allowance by the Examiner is requested.

IN RESPONSE TO THE OFFICE ACTION:

FIRST REJECTION UNDER 35 U.S.C. § 102:

Claim 9 has been rejected under 35 U.S.C. §102 as being anticipated by the reference DE 199802077 of Hans-Peter Jagla (the DE '077 reference). In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following:

For there to be anticipation under 35 U.S.C. §102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986) ("absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Crop. V. Lydall, Inc.*, 159 F.3d 534, 545, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990).

As positively recited in amended claim 9, the structure of the claimed invention includes at least one load-receiving belt that is attached between the cover and the floor for securing goods in the recess. Applicant submits that the DE '077 reference clearly shows the use of a support rod 36 to support the cover 15 in an open position. Further it should be noted that DE '077 does not disclose a cover pivotally connected to the floor of a vehicle. Instead the part 1 a, referenced by the Examiner, is mounted on a second part 1b that is a pivotable part and separate from the floor. (See Co. 1, line 60-63 and Fig. 6) Furthermore part 1a is not used to cover a recess in the floor of the vehicle. Instead it is used to cover a cavity 20 in a molded part 15a separate from the vehicle floor. (See Co. 2, lines 57-59). Applicant submits that this means that the arrangement disclosed in the DE '077 reference does not present a cover which when closed

coincides with the floor of the vehicle, to provide a large space when the cover is closed. Rather, the molded part 15a of the DE '077 reference will consume space in the vehicle even when closed.

For the above reasons Applicant submits that nowhere in the DE '077 reference is there believed to be any disclosure teaching or suggestion to modify the structure shown in a manner to achieve the claimed invention.

In view of the above, Applicant requests the reconsideration and withdrawal of the rejection of claim 9 under 35 U.S.C. §102 and ask that the Examiner indicate the allowance of the claims in the next paper from the Office.

SECOND REJECTION UNDER 35 U.S.C. § 102:

Claim 19 has been rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,375,055 issued to David J. Spykerman et al. (the Spykerman '055 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §102 has been discussed above in the response to the first rejection under 35 U.S.C. §102. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Enclosed with this paper is a certified translation into English of the Swedish Patent Application No. 9804389-6, filed December 17, 1998 the priority of which is hereby claimed. Thus by taking into account the priority claim of

the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection.

Given the above, Applicant requests that the rejection of claim 19 under 35 U.S.C. §102 be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

FIRST REJECTION UNDER 35 U.S.C. § 103:

Claims 1-3, 17, and 18 have been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman et al. (the Spykerman '055 reference) in view of U.S. Patent No. 6,253,943 issued to David J. Spykerman et al. (the Spykerman '943 reference).

Applicants request that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

A determination under 35 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370, 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching,

or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of establishing a prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. *In re Deuel*, 51 F.3d 1552, 1553, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F.2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35

U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claims 1-3, 17, and 18 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

SECOND REJECTION UNDER 35 U.S.C. § 103:

Claims 4-6, 25 and 26 have been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of Canadian Publication No. 2,137,634 by Leo Malinowski et al. (the CA '643 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective

date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claims 4-6, 25 and 26 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

THIRD REJECTION UNDER 35 U.S.C. § 103:

Claims 7, 8 and 20-22 have been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of the reference DE 199802077 of Hans-Peter Jagla (the DE '077 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35

U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claims 7, 8 and 20-22 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

FOURTH REJECTION UNDER 35 U.S.C. § 103:

Claims 11-13 have been rejected under 35 U.S.C. §103(a) as being unpatentable given the reference DE 199802077 of Hans-Peter Jagla (the DE '077 reference) in view of U.S. Patent No. 6,253,943 issued to David J. Spykerman et al. (the Spykerman '943 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

With regard to claims 11-13, as is positively recited in the claims, by virtue of their dependency on independent claim 9, the structure of the claimed invention includes at least one load-receiving belt that is attached between the cover and the floor for securing goods in the recess. Applicant submits that the DE '077 reference clearly shows the use of a support rod 36 to support the cover 15 in an open position. Further it should be noted that DE '077 does not disclose a cover pivotally connected to the floor of a vehicle. Instead the part 1 a, referenced by the Examiner, is mounted on a second part 1b that is a pivotable part and separate from the floor. (See Co. 1, line 60-63 and Fig. 6) Furthermore part 1a is not used to cover a recess in the floor of the vehicle. Instead it is used to cover a cavity 20 in a molded part 15a separate from the vehicle floor. (See Co. 2, lines 57-59). Applicant submits that this means that the arrangement disclosed in the DE '077 reference does not present a cover which when closed coincides with the floor of the vehicle, to provide a large space when the cover is closed. Rather, the molded part 15a of the DE '077 reference will consume space in the vehicle even when closed. Further, the Applicant submits that nowhere in the DE '077 reference or in Spykerman '943 is there believed to be any disclosure teaching or suggestion to modify the structure of the DE '077 reference to replace the support rod with at least one supporting member comprises a first supporting member further comprising supporting flaps pivotally mounted on the cover. That is to say nothing of the art of record provides the objective motivation and requisite reasonable expectation of success to make the modifications proposed by the Examiner to achieve the claimed invention. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

Given the above, Applicant requests that the rejection of claims 11-13 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

FIFTH REJECTION UNDER 35 U.S.C. § 103:

Claims 14-16 have been rejected under 35 U.S.C. §103(a) as being unpatentable given the reference DE 199802077 of Hans-Peter Jagla (the DE '077 reference) in view of Canadian Publication No. 2,137,634 by Leo Malinowski et al. (the CA '643 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

As is positively recited in the claims, the structure of the claimed invention includes at least one load-receiving belt that is attached between the cover and the floor for securing goods in the recess. Applicant submits that the DE '077 reference clearly shows the use of a support rod 36 to support the cover 15 in an open position. Further it should be noted that DE '077 does not disclose a cover pivotally connected to the floor of a vehicle. Instead the part 1 a, referenced by the Examiner, is mounted on a second part 1b that is a pivotable part and separate from the floor. (See Co. 1, line 60-63 and Fig. 6) Furthermore part 1a is not used to cover a recess in the floor of the vehicle. Instead it is used to cover a cavity 20 in a molded part 15a separate from the vehicle floor. (See Co. 2, lines 57-59). Applicant submits that this means that the arrangement disclosed in the DE '077 reference does not present a cover which when closed coincides with the floor of the vehicle, to provide a large space when the cover is closed. Rather, the molded part 15a of the DE '077 reference will consume space in the vehicle even when closed. Further Applicant submits that nowhere in the DE '077 reference or in CA '634 is there believed to be any disclosure teaching or suggestion to modify the structure of the DE '077 reference to replace the support rod with at least one load-receiving belt that is attached between the cover and the floor for securing goods in the recess. The Examiner points to the bungee cords 160 of the CA '643 reference, however, as is clearly shown the bungee cords 160 of the CA '643 reference are not attached between the cover and the floor. Instead as is clearly shown, an upright wall 28

serves this purpose. That is to say nothing of the art of record provides the objective motivation and requisite reasonable expectation of success to make the modifications proposed by the Examiner to achieve the claimed invention. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

Given the above, Applicant requests that the rejection of claims 14-16 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

SIXTH REJECTION UNDER 35 U.S.C. § 103:

Claims 22 and 24 have been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of U.S. Patent No. 6,253,943 issued to David J. Spykerman et al. (the Spykerman '943 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F.2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective

date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claims 22 and 24 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

SEVENTH REJECTION UNDER 35 U.S.C. § 103:

Claim 27 has been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of the reference DE 199802077 of Hans-Peter Jagla (the DE '077 reference) and in further view of Canadian Publication No. 2,137,634 by Leo Malinowski et al. (the CA '643 reference)..

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35

U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claim 27 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claim in the next paper from the Office.

EIGHTH REJECTION UNDER 35 U.S.C. § 103:

Claim 28 has been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of published U.S. Application No. US 2002/0095,947 A1 of Frank Treppedi et al. (the Treppedi '947 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant

requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claim 28 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claim in the next paper from the Office.

NINTH REJECTION UNDER 35 U.S.C. § 103:

Claims 29 and 30 have been rejected under 35 U.S.C. §103(a) as being unpatentable given U.S. Patent No. 6,375,055 issued to David J. Spykerman (the Spykerman '055 reference) in view of U.S. Patent No. 6,253,943 issued to David J. Spykerman et al. (the Spykerman '943 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §103 has been discussed above in the response to the first rejection under 35 U.S.C. §103. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

In order for a reference to be useable as the basis for a rejection under 35 U.S.C. §103, the reference must first qualify as prior art under the provisions of 35 U.S.C. §102. *In re Bass* 474 F2d 1276, 177 USPQ 178 (CCPA 1973). Only subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant submits that the Spykerman '055 reference does not qualify as prior art under the provisions of 35 U.S.C. §102. Specifically, the Examiner will note that the earliest effective date for the Spykerman '055 reference is May 7, 1999, i.e. the earliest claimed U.S. filing date. In contrast that Applicant has made and properly asserted a priority claim to International Application No. PCT/SE99/02403, filed December 17, 1999 which designates the U.S. under 35 U.S.C. §120 which in turn claims priority under Paris Convention Article 4, to Swedish Patent Application No. 9804389-6, filed December 17, 1998. Thus by taking into account the priority claim of the present application, the effective date for purposes of prior art in the present case (December 17, 1998) predates that of the Spykerman '055 reference. Thus, by law, the Spykerman '055 reference does not qualify as prior art and therefore cannot serve as the basis for the present rejection. Applicant submits that the elimination of the Spykerman '055 reference as prior art obviates any *prima facie* basis for the above rejection.

Given the above, Applicant requests that the rejection of claims 29 and 30 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.



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Applicant: ANDERS, Carlsson
Atty. Ref.: 07574.0066.PCUS00

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 08-3038, referencing Order No. 07574.0066.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tracy W. Druce'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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Date: 07 April '03